

MAGISTRATE JUDGE MICHELLE L. PETERSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	No. CR18-292-JCC
)	
Plaintiff,)	MOTION TO REOPEN
)	DETENTION HEARING
v.)	
)	Noted for June 7, 2019
JOSEPH LOREN ALLEN,)	
)	ORAL ARGUMENT REQUESTED
Defendant.)	

I. MOTION

Joseph Allen, through his attorney, Assistant Federal Defender Christopher Sanders, again respectfully requests that the Court reopen his detention hearing pursuant to 18 U.S.C. § 3142(f), and issue an order releasing Mr. Allen.

This motion is made pursuant to the Court's order at the last detention hearing on April 25, 2019. That order stated that Mr. Allen could readdress the issue of detention if he is not given the proper medical care.

At this time, Mr. Allen still has not received the proper medical care for his condition. He has not been brought to a surgeon for a follow-up consultation, three months after the consultation was initially ordered. Further, he now has a verifiable and stable release address and a plan to present to the Court.

II. PROCEDURAL & FACTUAL BACKGROUND

On August 24, 2018, Mr. Allen was arrested by Officer Jeff Nelson of the Auburn Police Department for an outstanding warrant. During the arrest, Nelson

1 intentionally ran Mr. Allen over with his patrol vehicle as Mr. Allen tried to run away
2 from him. Both of Mr. Allen's ankles were fractured in the process. The arresting
3 officers also dislocated Mr. Allen's shoulder in the incident when they grabbed him
4 from the fence and slammed him onto the ground. Mr. Allen was choked when they
5 tried to remove his helmet, and he was forced to try to walk to the squad car with two
6 fractured ankles.

7 Officer Nelson has a history of using force on the people he arrests. Donning
8 tattoos that read "JUDGED BY XII, CARRIED BY VIII", Officer Nelson has shot and
9 killed two other people, in 2011 and 2017. *See* Attachments 1, 2.¹ The inquest hearing
10 for one of those slayings is currently pending. Attachment 1.

11 On August 25, 2019, Mr. Allen underwent surgery to repair his fractured ankles.

12 On August 26, 2019, Mr. Allen was discharged from the hospital and transported
13 to the King County Jail for criminal proceedings.

14 On November 15, 2018, Mr. Allen was transported to the Federal Detention
15 Center ("FDC") and brought to court for his initial appearance for further criminal
16 proceedings. Dkt. 19. He was subsequently charged with two counts of felon in
17 possession, pursuant to 18 U.S.C. § 922(g), possession of methamphetamine, pursuant
18 to 21 U.S.C. § 841(b)(1)(C), and possession of a firearm in furtherance of a drug
19 trafficking crime, pursuant to 18 U.S.C. § 924(c). Dkt. 10.

20 Mr. Allen first brought the issue of his injuries to the Court's attention at an
21 arraignment hearing on December 6, 2019. Dkt. 14. During that hearing, Mr. Allen
22 reported that he was not receiving adequate care at the FDC. *Id.* The Court ordered
23 Mr. Allen to confer with the Government regarding the issue, and preserved
24 Mr. Allen's right to file a motion if care did not improve. *Id.*

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¹ Attachments 1–4 will be filed separately under seal.

1 On February 14, 2019, Mr. Allen was brought to see a physician at Virginia
2 Mason (although his prior appointment was at Harborview). Reviewing the imaging,
3 the physician noted problems with his ankles, indicating that both ankles showed
4 “fracture . . . with delayed union,” “loosening of the screws,” and “right lateral talar
5 dome osteochondral defect.” Attachment 3. The treatment recommendation was
6 “NSAIDS, probable further diagnostic testing, probable cortisone injections” and
7 diclofenac for infection. The doctor also indicated “returned appointment needed . . .
8 after consult with surgeon.” *Id.* Since then, Mr. Allen was given diclofenac. None of the
9 other recommendations have been followed.

10 On April 11, 2019, Mr. Allen moved the Court to reopen detention. Dkt. 20.
11 Again, Mr. Allen asked for the Court’s assistance in addressing his medical concerns.
12 By that point, Mr. Allen had been in custody since August 2018, and had not been
13 receiving proper medical care.² The BOP had not followed up with any of the
14 recommendations made by the physician who reviewed his radiographs on February 14,
15 2019. *Id.* The Court set a hearing to address the issue.

16 The day before the hearing, on April 24, 2019, the Government provided a letter
17 from a government physician, which *again* indicated that Mr. Allen needed to consult
18 with a surgeon. *See* Attachment 4.

19 At the hearing on April 25, 2019, this Court granted Mr. Allen’s motion to
20 reopen detention, finding new evidence to support the request. Specifically, Mr. Allen
21 came to the Court still in pain, after he was run over by the arresting officer’s patrol
22 vehicle, and he had not yet been brought to see a surgeon to address ongoing problems
23 related to his ankle fractures. Although the Court declined to change the previous
24 detention order at that time, the Court ordered that Mr. Allen could readdress the issue

25 ² In addition to the failure to follow the radiologist’s recommendations, Mr. Allen has
26 never received any physical therapy for his injuries, not even coaching on how he might
do physical therapy on his own.²

1 of detention if he continued to not receive the appropriate medical care for his
2 condition.

3 A month has passed since the Court found new evidence to reopen the detention
4 hearing. As of May 24, 2019, the Bureau of Prisons has still not taken Mr. Allen to see
5 a surgeon. He is still in constant, severe pain, in his right ankle in particular, and he is
6 worried that he will not walk normally again and that he may be permanently disfigured
7 due to the lack of care.

8 **III. STANDARD OF REVIEW**

9 The Court may reopen a detention hearing at any time before trial “if the judicial
10 officer finds that information exists that was not known to the movant at the time of the
11 hearing and that has a material bearing on the issue whether there are conditions of
12 release that will reasonably assure . . . the safety of any other person and the
13 community.” 18 U.S.C. § 3142(f).

14 **IV. ARGUMENT TO REOPEN DETENTION**

15 The Court may reopen detention as Mr. Allen has still not seen a surgeon for a
16 surgical consultation. That Mr. Allen has still not been brought to see a surgeon since
17 the last hearing on April 25, 2019, is new information that was not known to the
18 movant at that last hearing. On April 25, 2019, the Court specifically stated that
19 Mr. Allen may readdress the issue of detention if his access to the proper medical care
20 did not improve. Mr. Allen’s access to proper medical care has still not improved. It has
21 now been over three months since surgical intervention was initially ordered. *See*
22 Attachment 3. Mr. Allen’s full recovery is potentially at risk. Thus, Mr. Allen requests
23 that the Court reopen the issue of detention.

24 Further, Mr. Allen now has a new, verifiable release address where he can stay,
25 with his wife’s sister Dominique Sharteer in Seattle. Mr. Allen asks the Court to
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1 consider this as an additional basis to reopen detention. Only Mr. Allen's release on
2 bond will assure that he has the ability to receive proper care for his serious injuries.

3 Dated this 24th day of May 2019.

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5 Respectfully submitted,

6 *s/ Christopher Sanders*
7 Assistant Federal Public Defender
8 Attorney for Joseph Allen
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CERTIFICATE OF SERVICE

I certify that on May 24, 2019, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of filing to all registered parties.

s/ Suzie Strait
Paralegal